

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of Sections) GN Docket No. 93-252
(3) and 332 of the)
Communications Act)
)
Regulatory Treatment of)
Mobile Services)

**COMMENTS OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys, hereby respectfully submits these Comments in response to the Further Notice of Proposed Rule Making ("FNPRM") adopted by the Federal Communications Commission ("FCC or Commission") on April 20, 1994, in the above-styled proceeding.^{1/}

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as

^{1/} 59 Fed. Reg. 28042 (May 31, 1994).

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spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications services and facilities used in the oil and gas industries.

2. The purpose of the FNPRM is to further modify the recently created rules^{2/} governing the regulatory treatment of mobile service providers. The FCC seeks in the current phase of this proceeding to ensure that regulations are promulgated which support Congress' view of how mobile service providers should be regulated.^{3/}

3. API members operate extensive, private two-way mobile radio systems. While API appreciates that the FCC needs to establish regulations which meet Congressional expectations for the governance of Commercial Mobile Radio

^{2/} Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Rcd. 1411 (1994), erratum, Mimeo No. 92486 (Released: March 30, 1994) ("Second Report and Order").

^{3/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993) ("Budget Act").

Service ("CMRS") systems, API cautions that any new CMRS rules should not, purposefully or inadvertently, impinge on the use of any Private Mobile Radio Service systems ("PMRS").

II. COMMENTS

A. **The FCC Must Ensure That CMRS Provisions of the Budget Act Are Implemented In An Orderly Fashion**

4. API is encouraged by the Commission's recognition of the need to provide for an orderly transition with implementation of the new CMRS rules.^{4/} API congratulates the Commission on its commitment to this position. The need for an orderly transition is three-fold. First, as noted, the Commission must meet a tight deadline of August 10, 1994 to make changes to the existing service rules. API is concerned that, absent an emphasis on the need for care in this transition, and particularly in light of the unusually short deadline, the likelihood of improvidently implementing an unsuitably tailored regulation is strong. Likewise, the

^{4/} "First, the statute establishes a one-year period from the date of enactment, i.e., until August 10, 1994, for us to make such changes to our existing service rules as are necessary to implement the amendments to Section 332 and to provide for an **orderly transition**. FNPRM at ¶4. (emphasis added).

FNPRM's lack of an appendix setting forth the proposed rules, coupled with the short comment period, exacerbates the situation.

5. Second, API recognizes that, without an orderly transition, incidents could arise where PMRS systems are held liable for regulations which should only apply to CMRS systems. The benefit derived from avoiding such confusion is obvious.

6. Third, API is concerned that the proposed "Application for Mobile Radio Service Authorization," with its six separate schedules, may prove to be an unnecessarily complex document for the majority of PMRS licensing requirements. PMRS applicants should not be burdened with deciphering page after page of application material which does not apply to them and which may cause confusion and filing mistakes. Therefore, to prevent PMRS applicants from unnecessarily filling out non-applicable portions of the application, API strongly recommends that the FCC clearly label all sections of the application which do not apply to PMRS as "For CMRS Applicants Only."

B. No Apparent Reason Exists to Alter Part 90 of the FCC's Rules in this Proceeding

7. As noted above, API is concerned that the swiftness of this proceeding could result in the implementation of a poorly drafted rule and thus an unintended consequence. The FCC has stated that it is actively considering incorporating revisions to Part 90 in order to complete the task of installing a CMRS regulatory mechanism.^{5/} For example, the FNPRM includes a proposal to incorporate portions of the "Spectrum Refarming" proceeding.^{6/} API believes that the refarming proceeding should proceed independent of this matter and kept separate from the CMRS transition. One way to help ensure that the Private Land Mobile Radio Services, which do not meet the CMRS definition, are left unaffected by any mistakenly drafted regulations is for the FCC to forego any general amendment of Part 90 regulations in favor of well-considered, surgical Part 90 amendments which only alter the regulation of CMRS systems.

^{5/} FNPRM at ¶¶ 7 and 9.

^{6/} PR Docket No. 92-235.

C. The Rules Relating to Permissible Communications on non-CMRS Private Radio Systems Remain Relevant and Should Not Be Revisited

8. In the FNPRM, the Commission observed that the permissible communications prohibition which prevents Part 90 licensees from providing common carrier services is "clearly inappropriate" for Part 90 licensees that have been reclassified as CMRS providers.^{7/} The Commission further questioned whether all the other rules relating to permissible communications are still relevant under the new mobile services regulatory regime.^{8/} API strongly believes that the permissible communications rules pertaining to PMRS systems remain relevant and should not be revised.

9. It may be helpful to consider the historic record concerning the last attempt to eliminate the permissible communications rules. In 1984, the FCC sought to eliminate the permissible communications rules for the Private Land Mobile Radio Services.^{9/} The vast majority of commentors in that proceeding, including API, ardently opposed the

^{7/} FNPRM at ¶ 78.

^{8/} FNPRM at ¶ 79.

^{9/} Amendment of the Commission's Rules to Eliminate the Permissible Communications Restrictions in the Private Land Mobile Radio Services, Notice of Proposed Rule Making, 49 Fed.Reg. 10560, (PR Docket No. 84-109) (March 21, 1984).

elimination, and the FCC decided not to eliminate the rules. The underlying provisions were left essentially intact.^{10/} The FCC recognized that the orderly and efficient use of limited private radio spectrum resources must be maintained by stating:

We are keenly aware of the current congestion on shared frequencies and the problems associated with shared use. In light of the concerns expressed that elimination of the rules in bands where assignments are made on a shared basis would lead to unacceptable congestion between co-channel operations and would prevent licensees from using their systems effectively for their business activities, we have determined to leave the existing rules in place for those systems.^{11/} (Emphasis added.)

One of the major differences between the PMRS and CMRS is that the former share spectrum on a co-channel basis and the latter generally provide service on exclusive channel assignments. It is therefore critical that permissible communication rules for the PMRS generally limit communications to those related to safety of life and property, and the activities that form the basis for the licensee's eligibility.

^{10/} See Amendment of the Commission's Rules to Eliminate the Permissible Communications Restrictions in the Private Land Mobile Radio Services, Report and Order, 50 Fed.Reg. 6179, (PR Docket No. 84-109) (February 14, 1985).

^{11/} Id. at ¶ 6.

10. Moreover, the problems associated with spectrum congestion have only been exacerbated since the Commission reached its decision in Docket 84-109. Thus, there is no apparent reason for revisiting the rules as they pertain to PMRS systems. Accordingly, API urges the Commission to forego revising the permissible communications rules which apply to PMRS systems.

III. CONCLUSION

11. Due to the unusually short deadline in this proceeding and the absence of an appendix setting forth proposed rule text, API re-emphasizes the absolute need for care in this transition in order to avoid the implementation of unsuitably tailored regulations. API also requests that the Commission refrain from modifying Part 90 of the rules, where possible, to avoid unintended ill effects in PMRS systems. Finally, API strongly recommends that the existing permissible communications rules not be altered insofar as their PMRS application is concerned.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully requests that the Federal

Communications Commission take action in a manner consistent with the views expressed herein.

Respectfully submitted,

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